EDITOR'S NOTE

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Supreme Court, U.S.
FILED

NO. 94 1189 JAN 4 1995

SUPREME COURT OF THE UNITED STATES

October Term, 1994

IN RE THE MARRIAGE OF

JEAN ROSENBAUM,

Petitioner, acting Pro Se,

and

KURT ROSENBAUM,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE APPELLATE COURT OF ILLINOIS,

FIRST DISTRICT.

PETITION FOR WRIT OF CERTIORARI

Jean Rosenbaum, acting Pro Se

1354 West Greenleaf Street

Chicago, Illinois 60626

973-6047 (312)

QUESTIONS PRESENTED FOR REVIEW.

1. If the Appellate Court of Illinois, First District, violated the rights of JEAN ROSENBAUM, Petitioner, bestowed by the United States Constitution, Amendments I, V and XIV, when it remanded the case with orders to trial court to fashion a remedy to prohibit or limit her access to the courts?

2. If Appellate Court violated the rights of Petitioner under the United States Constitution, Amendments V and XIV, by affirming trial court's refusal to apply established law and procedure to her cause(s)?

a) If Appellate Court erred and violated Petitioner's rights under the United States Constitution, Amendments V and XIV, when it affirmed trial

court's act of striking her Section 2-1401 Petition (Ill. Rev. Stat. (1991), Ch. 110, Sec. 2-1401), before it had been noticed for hearing and without actually hearing it?

b) If Appellate Court erred and violated Petitioner's rights under the United States Constitution, Amendments V and XIV, when ruling under Ill. Rev. Stat. (1991), Ch. 2-1001 [1] she was not entitled to a change of venue, requested prior to commencement of hearings, although the request was made under Ill. Rev. Stat. (1991) Ch. 2-1401? [1]

1/

Ill. Rev. Stat. (1991), Ch. 2-1001 is a change of venue statute. Ill. Rev. Stat. (1991), Ch. 2-1401 states an action filed under this section is a new proceeding.

3. If Appellate Court erred by dismissing Petitioner's appeal, affirming trial court's award of $2,217.60 in sanctions to Respondent from her, and adding an additional sanction award of $4,122.95 for the appeal from her to Respondent, this strongly resembling an act of intimidating her into forfeiting her legal and Constitutional rights?

PARTIES TO THE PROCEEDING.

JEAN ROSENBAUM, always acting Pro Se in this segment of the case, was Respondent in trial court, Appellant in Appellate Court, and Petitioner in the Supreme Court of Illinois. She will hereinafter be referred to as JEAN.

KURT ROSENBAUM was Petitioner in trial court, Appellee in Appellate Court, and Respondent in the Supreme Court of Illinois. He will herein-

after he referred to as KURT.

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NO.

SUPREME COURT OF THE UNITED STATES

October Term, 1994

IN RE THE MARRIAGE OF

JEAN ROSENBAUM,

Petitioner, acting Pro Se,

and

KURT ROSENBAUM,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

PETITION FOR WRIT OF CERTIORARI

Petitioner, JEAN ROSENBAUM, acting Pro Se, respectfully prays that a writ of certiorari issue to review the judgment and Order entered March 29, 1994, by the APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, dismissing the appeal, imposing

heavy sanctions on her, and remanding to trial court for the sole purpose of fashioning a remedy to limit or prohibit her access to the courts.

OPINIONS BELOW.

No opinions have been entered in this segment of the case by any other court, or the Appellate Court of Illinois, First District. The March 29, 1994, final Order of Appellate Court appears to have been entered as a Rule 23 Order, under Ill. Rev. Stat. (1992), Supreme Court Rule 23, that says:

> "All cases not required by the foregoing paragraph to be disposed of by opinion shall be disposed of by a written order which shall succinctly state the facts, the contentions of the parties, the reasons for the decision, the disposition, and the names of the participating judges. Orders are not precedential and will not be published."

On October 6, 1994, the Illinois Supreme Court denied the Petition for Leave to Appeal.

JURISDICTION.

The final Order entered March 29, 1994, by the Appellate Court of Illinois, First District, which consists of 20 full-size pages, is sought to be reviewed.

On April 28, 1994, the timely-filed PETITION FOR REHEARING of JEAN, was denied by the Appellate Court. No extension of time to file this PETITION FOR WRIT OF CERTIORARI has been sought.

28 U.S.C., § 1257 (a), 1994, is the statutory provision believed to confer on this Court jurisdiction to review the March 29, 1994 Order in question by writ of certiorari.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

United States Constitution.

Article I, Section 9.

"No Bill of Attainer or ex post facto Law shall be passed."

Amendment I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2/

The equivalent of the foregoing Federal Constitutional clauses that rest in the State of Illinois Constitution, are: Article I, Section 2: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." Article I, Section 4: "All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense." Article I, Section 16:"No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities shall be passed."

ILLINOIS STATUTES INVOLVED.

Ill. Rev. Stat. (1991), Ch. 110, Section 2-1401. Set forth in Appendix (57)-(58); Post-judgment.

Ill. Rev. Stat. (1991), Ch. 110-A, Illinois Supreme Court Rule 137. Set forth in Appendix (59)-(60); Sanctions.

Ill. Rev. Stat. (1991), Ch. 110-A, Illinois Supreme Court Rule 375. Set forth in Appendix (61)-(62); Sanctions.

REGULATION INVOLVED.

Circuit Court of Cook County Rule 2.1.

"2.1. Notice of Hearing on Motions.

(a) NOTICE REQUIRED. Except in actions appearing on daily trial call or during the course of trial, written notice of the hearing of all motions shall be given to all parties who have appeared and have not theretofore been found by the court to be in default for failure to plead, and to all parties whose time to appear has not expired on the date of notice. Notice that additional relief has been sought shall be given in accordance with Supreme Court Rule 105."

STATEMENT OF THE CASE.

The Appellate Court of Illinois, First District, had jurisdiction of the case pursuant to Ill. Rev. Stat. (1991), Ch. 110-A, Par. 301, that says:

> "Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding ...."

This case involves a JUDGMENT OF DISSOLUTION OF MARRIAGE entered in December, 1983, on grounds of mental cruelty, and it is disputed that it ever became final. Respondent JEAN, Mother of KURT's three children [3] has strongly contested the entry of this

3/

There is now one grandchild, and more can still ensue.

JUDGMENT which, she believes is defective and should be voided. [4]

The case is the aftermath of an appeal of the prior segment, to the Appellate Court of Illinois, First District (Consolidation of Appeals Nos. 89-1152; 89-2068; 90-0536; 90-1911) that on February 5, 1991, entered a MODIFIED ORDER UPON DENIAL OF PETITION FOR REHEARING. JEAN attempted to appeal the decision in a PETITION FOR WRIT OF CERTIORARI, Case No. 412. BERMAN filed an appearance, but no other documents. Under United States Supreme Court Rule 12.4, JEAN filed a NOTICE, expressing her belief that KURT had no interest in the outcome of the PETITION, to which he did NOT re-

4/ It violates res judicata and related principles, gives awards from marital property to the three children but does not state when they should receive it, awards nothing to JEAN from KURT's anticipated pensions, now effective, etc.

spond. On November 4, 1991, the Petition for Certiorari was denied, and on January 13, 1992, the Petition for Rehearing was denied.

On March 13, 1992, JEAN returned to the Circuit Court of Cook County, Illinois, Domestic Relations Division, and timely-filed a COMPLAINT-PETITION under Ill. Rev. Stat. (1989), Ch. 110, Section 2-1401(f). It expressed her belief that because of KURT's inaction in the United States Supreme Court, the case became moot and abated under R.12.4, entitling her, therefore, to have the appealed Judgment(s), including the JUDGMENT OF DISSOLUTION, reversed/or vacated, and the case dismissed. Before calling it for hearing [5] JEAN,

5/ Circuit Court of Cook County, Illinois Rule 2.3, (1990) permits 90 days in which to call a document for hearing.

on March 27, 1992, filed a PETITION FOR CHANGE OF VENUE from Judge E. Solganick, to be heard April 28, 1992. On April 8, 1992, BERMAN filed an ANSWER TO PETITION FOR CHANGE OF VENUE, and a MOTION TO STRIKE AND DENY PETITION OF JEAN ROSENBAUM, DEFENDANT, FILED PURSUANT TO SECTION 2-1401 OF THE ILLINOIS CODE OF CIVIL PROCEDURE. This was despite the fact the PETITION filed under Section 2-1401 had never been called hearing. His documents were scheduled for hearing on April 28, 1992. On the first page of JEAN's ANSWER TO MOTION TO STRIKE of BERMAN, she explained the Court did NOT have jurisdiction to rule presently on the Section 2-1401 Petition, as it had not been called for hearing. On April 28, 1992, Judge Solganick DENIED the PETITION FOR CHANGE OF VENUE, and struck the Sec. 2-

1401 Petition, which still had not been noticed for hearing by JEAN, or anyone.

JEAN immediately expressed an oral, instanter motion asking for a Declaratory Judgment to determine her equal right as a Wife and Mother to have existing law and Court Rules applied to her cause, and at the request of the Court, on May 26, 1992, repeated the motion in writing, and filed it. The intent of this motion also included "common-law" rights. DENIED, July 7, 1992. On June 19, 1992, JEAN filed a MOTION FOR ADJUDICATION ON UN-RESOLVED ISSUES, that included (but was not limited to) the res judicata effect of the earlier decision in Rosenbaum v. Rosenbaum (First Dist. 1976), 38 Ill. App. 3d 1, 13, 349 N.E. 2d 73; (it ruled KURT could not prove his lack of provocation when leaving the marital premises) financial matters, etc.

July 7, 1992, DENIED. BERMAN filed a PETITION FOR SANCTIONS under Illinois Supreme Court Rule 137, on May 13, 1992. JEAN answered and filed a MOTION TO STRIKE. On September 1, 1992, the Court's ORDER allowed sanctions to BERMAN in the amount of $2,217.60. This was in addition to the $5,398.02 BERMAN had already received from the Amalgamated Bank account, to which Jean had objected. All post-trial motions of JEAN were DENIED.

JEAN filed timely a NOTICE OF APPEAL, and on November 10, 1992, Judge Carole Bellows finalized a stay, acknowledging JEAN had properly posted the $3,300.00 required as supersedeas by Judge Solganick with the Clerk of the Court.

In the appeal of the Circuit Court decisions to the Appellate Court of Illinois, First District, No. 92-3948,

the appeal court affirmed the trial court decisions totally in its March 29, 1994, Order, including the sanctions, and awarded an additional $4,122.95 in sanctions to BERMAN for the appeal. It struck the main arguments in JEAN's Brief, and remanded the case to trial court "for the sole purpose of fashioning a remedy to prohibit or limit JEAN's access to the courts."

The Appellate March 29, 1994 Order cites six cases to substantiate the decision of the Court, ALL of which are off-point and not validly applicable to the arguments presented by JEAN. The Order contains many mis-statements of fact; this may have led to misunderstandings by appeal court and an erroneous decision. Only a few of these mis-statements are presently corrected; see Appendix (68)-(70).

Matters involving the Keystone stock, a marital asset, were included in Appeal 92-3948. Both parties had been restrained by trial court from disposing of their share of the stock, now divided. On May 7, 1993, before the Appellate March 29, 1992 Order was forthcoming, BERMAN asked the reviewing court to release the stock; JEAN answered, and May 20, 1993, DENIED. He then filed a similar document in trial court; that court, on September 8, 1993, ALLOWED his request over JEAN's objections. As this was about 11 months after the Notice of Appeal had been filed, JEAN had to file a new appeal, No. 93-3777, on the issue. Appellate Court DENIED her request to consolidate it with No. 92-3948. [6] Appendix (45)-(46).

6/ At time of writing, Appeal No. 93-3777 has not been resolved. The appeal

Raising the Federal Questions.

Review of a judgment of a State of Illinois Court is sought.

Article I, Section 9 of the United States Constitution, and Article I, Section 16 of the State of Illinois Constitution, forbidding ex post facto laws, was first raised in JEAN's Appellate REPLY BRIEF, timely-filed June 10, 1993, page 15, where the ex post facto application of the Illinois sanction

6/_____ (con'd).

No. 93-3777 also tells Appellate Court that KURT has still NOT complied with the 1983 JUDGMENT OF DISSOLUTION, and provided JEAN with a copy of a Court-ordered $15,000.00 life insurance policy bearing her name as beneficiary, despite many Court orders. In re Marriage of Leopando (1983), 96 Ill. 2d 114, 119, 449 N.E. 2d ruled that until all the ancillary issues are resolved, the petition for dissolution is not fully adjudicated. Also see: In re Marriage of Lai (First Dist. 1989), 192 Ill. App. 3d 807, 549 N.E. 2d 639.

laws, not effective until 1989, was argued. DENIED automatically with the dismissal of JEAN's appeal.

The violation of the United States Constitution, Amendment I, was not raised in trial court. In the Appellate Court, it was raised in JEAN's timely-filed PETITION FOR REHEARING, on page 22, pertaining to the Appellate Court's directive ordering a remand requiring the trial court to prohibit or limit her access to the Courts. In the Supreme Court of Illinois, Petition for Leave to Appeal No. 77388, the violation of Amendment I was raised in a MOTION TO RECONSIDER AND VACATE ORDER DENYING STAY OF MANDATE, filed October 31, 1994, on pages 2-3, pertaining to the reason for granting the stay, if trial Judge Bellows stay order was not sufficient. Both DENIED.

Violation of the United States Constitution, Amendments V and XIV, which were always cited together, was raised in trial court in Jean's COMPLAINT-PETITION FILED UNDER ILL. REV. STAT. (1989), CH. 110, SECTION 2-1401(f), at page 8 thereof (R. C.071), pertaining to the judgments, errors, violations, etc., in the case along with the new events. [7] COMPLAINT-PETITION STRICKEN.

Amendments V and XIV were also raised in trial court in JEAN's --

1. ANSWER TO PETITIONER'S "MOTION TO STRIKE 'MOTION FOR ADJUDICATION ON UNRESOLVED ISSUES,'" page 2 (R. C.366), pertaining to BERMAN's efforts to

7/ Numbering beginning with "R. C." refers to numbering later assigned by assemblers of the trial court Record on Appeal, filed in Appellate Court.

secure an injunction against JEAN to prohibit her future filings. Both BERMAN's request and JEAN's Motion DENIED.

2. POST-HEARING (TRIAL) MOTION TO VACATE SPECIFIED PORTIONS OF ORDERS ENTERED JULY 7, 1992, OR MODIFY SAME, timely-filed July 20, 1992, pages 4 and 8 (R. C. 378, 382), pertaining to her request for an award of interest on a judgment such as BERMAN received, and JEAN's request for sanctions because of BERMAN's frivolous filings. Both DENIED.

3. POST-HEARING (TRIAL) MOTION TO VACATE TWO ORDERS IMPOSING SANCTIONS AGAINST RESPONDENT, filed September 8, 1992; page 8 (R. C. 476), and page 13, (R. C.481), pertaining to the filing of more than one Section 2-1401 Petition as new information arose, and the sanctions imposed on JEAN. DENIED.

4. REPLY TO ANSWER OF KURT ROSENBAUM, PETITIONER, TO "SECOND PETITION FOR RULE TO SHOW CAUSE," page 3 (R. C.509), wherein KURT objected it was inconvenient for him to pay JEAN's Blue Cross out of funds earmarked for her eventually, and asking to be relieved of the requirement. DENIED.

5. REPLY TO RESPONSE OF KURT ROSENBAUM, PETITIONER, TO POST-HEARING MOTION TO VACATE TWO ORDERS IMPOSING SANCTIONS, filed October 2, 1992, pages 6-7 (R. C.523-24. DENIED.

In the Appellate Court, the violations of Amendments V and XIV of the United States Constitution were raised in Jean's BRIEF, timely-filed April 21, 1993, page 31, in an argument that begins on page 29 entitled: THE COURT WAS REQUIRED TO VACATE ALL JUDGMENTS APPEALED TO THE SUPREME COURT OF THE

UNITED STATES, AND DISMISS THE CAUSE, IF IT HAD VALID JURISDICTION. DENIED automatically with dismissal of the appeal. The violation of Amendments V and XIV was also argued in JEAN's PETITION FOR REHEARING, timely-filed April 19, 1994, in a Section entitled APPELLATE COURT HAS ERRED BY ORDERING A REMAND FOR THE PURPOSE OF LIMITING JEAN's ACCESS TO THE COURTS, OR PROHIBITING HER ACCESS, at page 23. DENIED. [8]

In the Supreme Court of Illinois, violation of Amendment XIV of the United States Constitution is in JEAN's MOTION TO RECONSIDER AND VACATE ORDER DENYING STAY OF MANDATE, page 3, filed October 31, 1994. DENIED.

8/ Wherever violation of Amendments V and XIV is cited by JEAN, the comparable clause in the Illinois Constitu- Article I, Section 2, is also cited.

ARGUMENT.

REASONS FOR GRANTING THE WRIT.

Certiorari should be granted for several reasons. This case presents issues that have been previously resolved by this Court in decisions applicable to Federal Courts, that are required to be followed by the State Court(s), to which the Appellate Court of Illinois, First District, Second Division, has refused to adhere. Its March 29, 1994 Order has decided the question(s) in a way that not only conflicts with applicable decisions of this Court, but in so doing, has strongly violated JEAN's rights under the United States Constitution. People involved in the Courts should be able to rely on the laws, case decisions and Court Rules at all stages of litigation, instead

of being confronted with and confused by the lack of adherance to the law, and disrespect of the law by the very persons who have been placed in a position to enforce it.

To justify its decision, made under color of State law, that the case should be remanded to trial court for the sole purpose of fashioning a remedy to prohibit or limit JEAN ROSENBAUM's access to the courts because she has pursued her legal remedies, Appellate Court's final Order cites In re Martin-Trigona (2nd Cir. 1993), 9 F. 3d 226, which is NOT on point. The case involves pro se litigants who had previously been sanctioned for vexatious lawsuits in unrelated proceedings, and who sought disclosure of judges ruling on their applications. At page 228, it says:

> "The procedures authorized by statute and rule for the conduct

> of appeals contemplate appeals taken by litigants, whether appearing by counsel or acting pro se, who are proceeding in good faith to vindicate legitimate appellate rights."

In a case similar to the foregoing, Martin v. District of Columbia Court of Appeals (1992), ____ U.S. ____, 113 S.Ct. 397, 397, 121 L.Ed. 2d 305, the litigant had filed over 45 petitions in ten years, 15 in the preceding two years and nine in the last year, always forma pauperis; it was ruled that henceforth he must pay the docketing fee, and submission of the petition(s) was required, under United States Supreme Court Rule 39.

Although of modest means (at age 73 she is now retired and has no earned income), JEAN has never filed forma pauperis, and her appeals have all been strongly related. She, too, has found "vexatious and harassing" the

opposition's continual ignoring and evasion of her legal right to the application of res judicata and collateral estoppel to her case, the constant refusal of the Court(s) to adjudicate unresolved issues of importance, the refusal of the Court(s) to apply legitimate Court Rules to her cause, and reluctance to issue a Declaratory Judgment expressing her legal and common-law rights as a Wife and Mother.

Appellate Court's efforts to prohibit or limit JEAN's access to the Courts is, under color of state law, actually an attempt to deprive her of her rights under Amendment I, Amendment V and Amendment XIV, of the Constitution of the United States, and to deprive her of the right to free speech. Joseph Burstyn, Inc. v. Wilson (1952), 343 U.S. 495, 500,

96 L.Ed. 1098, 72 S.Ct. 777, ruled:

> "In a series of decisions beginning with Gitlow v. New York (1925), 268 U.S. 652, this Court held that the liberty of speech and of the press which the First Amendment guarantees against abridgement by the federal government, is within the liberty safeguarded by the Due Process Clause of the Fourteenth Amendment from invasion by state action. This principle has been followed and reaffirmed to the present day."

Acts of the Appellate Court of Illinois First District, Second Division, are acts of the State, and cannot violate the First Amendment rights .... the State may not employ means that stifle fundamental personal liberties.

Pertaining to Amendment I, Landmark Communications, Inc. v. Virginia (1977), 435 U.S. 829, 838, 98 S.Ct. 1535, 56 L.Ed. 2d 1, ruled:

> "Whatever differences may exist about interpretation of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to

> protect the free discussion of governmental affairs."

The Courts are an integral and important part of our Government, and any matters arising therein should merit free discussion and "filing," under Amendment I.

Pertaining to Amendment V, Matter of N. C. Trading (1978), 586 F.2d 221,223, ruled:

> "The right to petition the government for a redress of grievances includes the right of access to the courts -- that right is also subject of due process protection ..."

Pertaining to Amendment XIV, Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York (1980), 447 U.S. 530, 534, 100 S.Ct. 2326, 65 L.Ed. 2d 319, ruled:

> "The First and Fourteenth Amendments guarantee that no State shall abridge the freedom of speech....The First and Fourteenth Amendments remove governmental restraints from the arena of public discussions, putting the decision as to what views shall be voiced

> largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity.... This Court has emphasized that the First Amendment 'embraces at the least the liberty to discuss publicly and truthfully all matters of public concern.'"

JEAN's allegedly "vexatious" litigation and appeals, as her Petition for Rehearing in Appellate Court, page 19, explained, in part were:

1. First appeal, she reversed an erroneous divorce that had been entered;

2. Another appeal involved remaining partition issues after KURT partitioned the family home, and the purchaser retained a heap of JEAN's mail after her eviction;

3. No. 82-1790, an interlocutory appeal (Appellate Court, First District, Second Division), on an injunction granted KURT that left JEAN unable

to discuss family and other matters with KURT, despite their three children and the fact they were still married;

4. In the two, separate consolidated appeals, each consolidation was actually one segment of the case, the separate parts filed separately on each aspect because of ambiguous case law on final orders, and time requirements. ETC.

It is apparent that Appellate Court, which has upheld trial court's refusal to rule on unresolved issues, has erred when attempting to limit JEAN's access to the Courts, her appeals being necessary to resolve important issues.

Appellate Court has seriously defied established law, court procedures and court rules, when affirming the acts and procedures used by the Circuit Court of Cook County, Illinois, Domestic Relations Division. That court also defied

established law and procedures, etc.; both Courts overreached their powers, and this was a strong violation of JEAN's rights under the United States Constitution, Amendment V and Amendment XIV. United States v. Townsend (D.C. 1957), 151 F. Supp. 378, 379, 387, says:

> "Due process under this Amendment (V) when applied by Federal courts, serves as basic protection of citizens against unjust federal action, and must be given even broader construction than due process under Amendment XIV."

In United States v. LaMonica (C.A.1972) 472 F. 2d 580, 580, the Court said:

> "Amendment V is intended to protect the individual from government overreaching."

Instances of trial court's overreaching, affirmed by Appellate Court, are: Circuit Court of Cook County, Illinois, Rule 1.1(a) (1990), requires that notice of all proceedings be given to all parties who have not

been found by the Court to be in default." Circuit Court Rule 2.1(a) requires the same (see page 6). Circuit Court Rule 2.3 allows 90 days to call a motion for hearing (see page 9). "If the notice is invalid, the the Court lacks jurisdiction," Welfelt v. Schultz Transit Company (First Dist. 1986), 144 Ill. App. 3d 767, 772, 494 N.E. 2d 699. "The notice rule has the force of a statute, and is binding upon the parties as well as the court," In re Estate of Young (1953), 414 Ill. 525, 535, 112 N.E. 2d 113. Additionally, there was no actual hearing on the Section 2-1401 Petition. The transcript reveals that BERMAN handed the Section 2-1401 Petition to the Court, who abruptly struck and dismissed it, pretending it had been called for hearing and had been heard. Opportunity to

be heard is a fundamental concept of a fair hearing, Stone v. Department of Employment Security Board of Review (Second Dist. 1991), 213 Ill. App. 3d 739, 745-46, 572 N.E. 2d 412.

After JEAN's SECTION 2-1401 COMPLAINT-PETITION was filed, she first noticed for hearing the PETITION FOR CHANGE OF VENUE from Judge I. Solganick. Section 2-1401 Petitions are new actions subject to the usual rules of civil practice, Ill. Rev. Stat. (1991), Ch.110, Section 2-1401, Appendix (57)-(58), (64). Although BERMAN asked for immediate hearing on the PETITION FOR CHANGE OF VENUE, and noticed his MOTION TO STRIKE AND DENY RESPONDENT'S SECTION 2-1401 PETITION, he also did not notice the SECTION 2-1401 PETITION for hearing.

JEAN's ANSWER explained the lack of jurisdiction of the Court, but never-

theless, on April 28, 1992, Judge Solganick struck the still un-noticed Section 2-1401 PETITION without hearing it. The Report of Proceedings and recollection both reveal that BERMAN simply handed the Section 2-1401 Petition to the Court, who abruptly struck it, pretending that it had been called for hearing and had been heard, after he denied the PETITION FOR CHANGE OF VENUE. JEAN's instanter, oral MOTION FOR DECLARATORY JUDGMENT was eventually DENIED, after put in writing. Grinols v. Mabus (N.D. Miss. 1992), 796 F. Supp. 972, 974, indicates:

> Basically, question of whether complaint presents actual controversy ripe for decision within Declaratory Judgment Act, is whether there is substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a Declaratory Judgment.

The Section 2-1401 COMPLAINT-PETI-

TION presented an actual, substantial controversy, explaining that by BERMAN's lack of response in writing to the U. S. Supreme Court Clerk, to JEAN's U. S. Supreme Court Rule 12.4 NOTICE that KURT was no longer interested in the outcome of the PETITION FOR CERTIORARI, he had waived the case. The case, thus, became moot, and the U. S. Supreme Court was unable to exercise jurisdiction. In Deakins v. Monaghan (1988), 484 U.S. 193, 199, 108 S.Ct. 523, 98 L.Ed. 2d 529, the Court clarified:

> "Article III of the Constitution limits federal courts to adjudication of actual, ongoing controversies between litigants .... It is not enough that controversy existed at the time the complaint was filed, and review obtained ...."

The Court ruled then that because there was no longer a live controversy, the questions were moot. "This court is

not empowered to decide moot questions," United States v. Alaska S.S. Co. (1920), 253 U.S. 113, 116, 40 S.Ct. 448, 64 L.Ed. 808.

In a case from a Federal Court, when the case became moot, the judgment was vacated and the case dismissed, Alabama v. Davis (1980), 446 U.S. 903, 905, 100 S.Ct. 1827, 64 L.Ed. 2d 256. In a case from a State Court, one must return to the State Court for this purpose, which JEAN was entitled to do. State courts are obligated to follow decisions of the United States Supreme Court, Corbett v. Devon Bank (First Dist. 1973), 12 Ill. App. 3d 559, 567, 299 N.E. 2d 521.

By striking the SECTION 2-1401 Petition, trial court not only violated the law, but prevented JEAN from achieving her purpose. Trial court

overreached its powers, and Appellate Court did likewise when affirming the actions of trial court, thus violating JEAN's right to due process and equal protion of law guaranteed by the United States Constitution, Amendment XIV, and Amendment V. Daniels v. Williams (1986), 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed. 2d 662, determined:

> "The due process clause of the Fourteenth Amendment has historically been applied to deliberate decisions of government officials to deprive a person of life, liberty or property, reflecting the traditional and common sense notion that it is intended to secure the individual from the arbitrary exercise of the power of government."

In re Marriage of Diehl (Second Dist. 1991), 221 Ill. App. 3d 410, 427, 582 N.E. 2d 281, ruled:

> "United States Constitution guarantees equal protection under the law for all; it guarantees that persons similarly situated shall be treated similarly."

The Court's have NOT treated JEAN and KURT similarly in this instance, KURT being given preferential treatment.

Appellate Court has affirmed the trial court's denial of JEAN's PETITION FOR CHANGE OF VENUE, by citing the In Re Marriage of Kozloff decision (1984), 101 Ill. 2d 526, 463 N.E. 2d 719, and striking this portion of JEAN's BRIEF, Appendix (28)-(29). A portion of the Kozloff decision appears in the Appendix (65)-(66). It reveals that the decision was entered under Section 2-1001(c) of the Code of Civil Procedure (Ill. Rev. Stat. 1981, Ch. 110, Par. 2-1001(c)), which is the Illinois Change of Venue Act, and that it applies to an ordinary post-judgment motion, or post-decree matters. However, JEAN's PETITION FOR CHANGE OF VENUE was filed under Ill. Rev. Stat.

(1989), Ch. 110, Sec. 2-1401. The Statute (b) requires: "The petition must be filed in the same proceeding in which the judgment was entered, but is not a continuation thereof," Appendix (57)-(58). Ostendorf v. International Harvester Co. (1982), 89 Ill. 2d 273, 279, 433 N.E. 2d 253 adheres to the Statute, and adds: "The petition is in fact a new action and is subject to the usual rules of civil practice." The Section 72 Petition referred to in Ostendorf, is actually a Section 2-1401 Petition, Section 72 having been renumbered at a later date, Appendix (63)-(64). Ziarko v. Soo Line Railroad Company (1994) 161 Ill. 2d 267, 283, 641 N.E. 2d 402, determined:

> "Statutory provisions are to be given their plain and ordinary meaning in order to give effect to the objective of the legislature,"

A party's right to a change of venue is absolute if presented before the Judge enters a substantial ruling, In re Dominique F. (1991), 145 Ill. 2d 311, 324, 583 N.E. 2d 555. JEAN's right to equal protection of the law, United States Constitution, Amendment XIV has been violated by the Courts in this instance, also. Appellate Court misapplied the Kozloff decision, to the detriment of JEAN's Constitutional rights and her cause, and wrongfully assessed sanctions against her because she questioned the decision (Appendix (29), as well as wrongfully striking this part of her Appellate Brief.

It is believed that Appellate Court also wrongfully struck all parts of JEAN's BRIEF with the exception of the statement of issues and the jurisdictional basis for her appeal, Appen-

dix (27). To best of her knowledge and belief, she violated no rule relating to Briefs; see Ill. Rev. Stat.(1991), Ch. 110-A, Par. 341.

At the Appellate level, Appellate Court assessed sanctions against JEAN to BERMAN and client because, Appendix (31):

> "the validity of the money judgments which gave rise to the turnover order were "still before the United States Supreme Court." This argument was dealt with in the 1991 modified order of this court and is therefore res judicata. Respondent's persistence with this argument subjects her to sanctions."

JEAN's Appellate Brief, page 36, reveals BERMAN first asked for a turnover of funds from Amalgamated Bank in December, 1991, but the Appellate Mandate was recalled. He reneated the request in a Motion filed April 15, 1992, and Judge Solganick delayed hearing on the issue on April 28, 1992; Brief, page 37. On June 5, 1992, BERMAN filed another

Motion on the issue. It is impossible, therefore, for the Appellate Court to have dealt with the issue in its 1991 Order, and it is not justified in assessing sanctions for this against JEAN!

The Appendix (38)(39) reveals that Appellate Court also assessed sanctions against JEAN because of appeals she believed necessary to file due to the Courts' refusal to rule on issues that had been previously presented; JEAN should not have to pay a financial penalty for this! Eventually, Appellate Court assessed $4,122.95 against JEAN for the appeal, at a rate of $100.00 per hour, Appendix (43), although it affirmed a rate to BERMAN of approximately $175.00-$200.00 per hour awarded as sanctions against JEAN by trial court, refusing to alter it.

Appellate Court subjects JEAN to sanctions, Appendix (31)-(32), because she stated that the trial court erred by failing to entertain her request for a continuance, as there is an Order that specifically denies the request. JEAN's Appellate Brief, page 39, describes the Court's behaviour

"COURT: The turnover is granted. What is the next Motion?"

"JEAN told the Court she filed for a continuance on the turnover issue, and the Court said:

"COURT: Well, by its face it's denied."

"Nor is there any evidence of an actual hearing on the turnover motion, or on Jean's Motion for a Continuance involving it." (Referring to Report of Proceedings.) Page 39, Jean's Brief.

JEAN should not be subjected to sanctions for this!

The sanction awards to BERMAN were based on the Section 2-1401 petitions JEAN filed, made necessary by new facts

and occurences, and the Courts' reluctance to rule on all issues presented, despite their importance. The Section 2-1401 Statute places no limit on the number of such petitions that can be filed, nor does case law, if circumstances require it. Additionally, neither of the sanction Statutes, Illinois Supreme Court Rules 137, Appendix (59)-(60), or 375, Appendix (61)-(62), were effective prior to 1989. Sanctions were imposed on JEAN, however, because of past litigation that occurred prior to 1989, giving the sanction Statutes an ex post facto effect, contrary to the intent of the United States Constitution, Article I, Section 9. Subtle ex post facto violations are no more permissible than overt ones, Kring v. v. Missouri (1883), 107 U.S. 221, 221,

2 S.Ct. 443, 27 L.Ed. 506, Collins v. Youngblood, (1990) 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed. 2d 30 (on remand 909 F.2d 803). Both Appellate Court and trial court erred by imposing sanctions on JEAN because of events that transpired prior to 1989 primarily, and violated her Constitutional rights by so doing.

Kennedy v. Miller (Second Dist. 1991) 221 Ill. App. 3d 513, 525, 582 N.E. 2d 200, ruled:

> "Supreme Court Rule 137 provides that the court on its own initiative may impose an appropriate sanction on an attorney or party who imposes an unfounded pleading for an improper purpose...."

Lewy v. Koeckritz International, Inc. (First Dist. 1991), 211 Ill. App. 3d 330, 334, 570 N.E. 2d 361, ruled:

> "Rule 137 is intended to prevent counsel from making assertations of fact or law without support."

Heerey v. Berke (First Dist. 1992), 225 Ill. App. 3d 153, 587 N.E.2d 526:

"An unsuccessful Petition for Change of Venue does not warrant sanctions."

None of JEAN's pleadings have been unfounded; all have been substantiated with appropriate law. However, BERMAN has consistently told the trial court that all the requirements of the 1983 JUDGMENT OF DISSOLUTION OF MARRIAGE have been complied with, but JEAN has still not received a valid copy of the Court-ordered life insurance policy, in the name of KURT, and listing her as the irrevocable beneficiary. The Courts below have assessed sanctions against JEAN because she seeks to void a defective decree, instead of against KURT and BERMAN.

This Court should take this opportunity to reinforce the United States

Constitutional rights of citizens of this country to free speech, due process and equal protection of law, and to restrain Court officials from overreaching their authority.

Certiori should also be granted to clarify the responsibility of the Courts at the State level to follow decisions of the Supreme Court of the United States when Rule 12.4 of the U. S. Supreme Court has been violated by a litigant, the case thus becoming moot, and then returned to the State Court. Although such a situation has been fully resolved re Federal Court cases, it has only been resolved by implication re cases from State Courts, and further directives appear to be required. Conflicting decisions exist. Ankenbrandt v. Richards (U.S. La. 1992), ___ U.S. ____, 112 S.Ct. 2206,

2208, ___ L.Ed. 2d ____, ruled:

"Constitution does not exclude domestic relations cases from jurisdiction...."

CONCLUSION.

For the reasons set forth above, it is braved that a Writ of Certiorari issue to review the judgment and final Order of the Appellate Court of Illinois, First District, Second Division, in this matter.

Respectfully submitted,

Jean Rosenbaum

JEAN ROSENBAUM, Petitioner, acting pro Se. *

DATED: January 4, 1995.

*See copy marked "Notarized Copy" for original signature(s).

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C O P Y

SECOND DIVISION
March 29, 1994

No. 1-92-3948

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF	) Appeal from the
	) Circuit Court
KURT ROSENBAUM,	) of Cook County,
	) Illinois.
Petitioner, Counter-Defendant, Appellee,	)
	) No. 81 D 22050.
v.	)
	)
JEAN ROSENBAUM,	) Honorable
	) Irwin J.
Respondent, Counter-Plaintiff, Appellant.	) Solganick, Judge Presiding.

O R D E R

Respondent, Jean Rosenbaum, appeals pro se from denial of her section 2-1401 petition for vacation of the judgment of dissolution of her marriage to petitioner, Kurt Rosenbaum. (Ill. Rev. Stat. 1991, ch. 110, par. 2-1401.) She also raises as error several matters which occurred during the pendency of this

Petition. These issues include denial of her petition for change of venue, her attack on the jurisdiction of the trial court, imposition of sanctions against her and entry of a turnover order in favor of petitioner's attorney. Respondent also contends that the trial court erred in denying her motion for declaratory judgment and motion to adjudicate unresolved issues.

Several motions were taken with the case. Petitioner filed a motion to strike part of respondent's brief and requested sanctions. Respondent filed a motion to strike the aforesaid motion and also filed a motion to strike specified portions of petitioner's brief.

The judgment of dissolution of the parties' marriage was entered on

December 16, 1983. (In re Marriage of Rosenbaum (1st Dist. 1985), No. 84-489 (unpublished order under Supreme Court Rule 23).) Four of the twelve other appeals brought by respondent were consolidated as a result of several post-judgment motions brought by respondent following the divorce decree. These were eventually resolved in a modified unpublished order upon denial of petition for rehearing entered February 5, 1991. (In re Marriage of Rosenbaum (1st Dist. 1991), Nos. 89-1152, 89-2068, 90-0536 & 90-1911 (unpublished order under Supreme Court Rule 23).) The history of the litigation was set forth in detail in this 34 page order. Among other things it noted that respondent filed a section 2-1401 petition in June 1986. Her appeal of the

denial of this petition was dismissed by this court in May 1987. Respondent filed another section 2-1401 petition in August 1988, dismissal of which was affirmed by the modified order. The modified order also contains our finding that petitioner did not abandon his case by failing to appear in response to respondent's filing in the United States Supreme Court.

On March 13, 1992, respondent filed a section 2-1401 petition attacking the judgment for dissolution of marriage and various other orders. (Ill. Rev. Stat. 1991, ch. 110, par. 2-1401.) According to respondent, petitioner's refusal to participate in her United States Supreme Court action rendered the judgment or dissolution of marriage "moot" and "abated." On April 28, 1992,

the trial court denied respondent's petition for a change of venue and granted petitioner's motion to strike respondent's section 2-1401 petition. The trial court stated that respondent's venue petition was not timely filed.

On May 13, 1992, petitioner filed a Supreme Court Rule 137 petition for sanctions, noting that respondent had filed successive section 2-1401 petitions, the denial of which had been affirmed on appeal. (134 Ill. 2d R. 137.) Petitioner requested $1,720.70 in attorney fees and costs. Attached to this petition were a copy of the modified order, an attorney fee breakdown and a letter from Edward A. Berman, petitioner's counsel, advising respondent that he would seek fees if she persisted in pursuing

her section 2-1401 petition. Respondent filed two answers to the petition for sanctions. She denied that the petition was properly verified, admitted that her section 2-1401 petition was not the first, but asserted that each successive petition set forth "a new set of issues and violations by Petitioner." Respondent also claimed that her section 2-1401 petition had not yet been called for a hearing. She alleged that such a petition was considered a new action and denied that her petition was designed to harass or cause delay. She also objected to the fee time sheet filed by Mr. Berman.

On May 26, 1992, respondent filed a petition for a rule to show cause for petitioner's failure to provide her

with a court-ordered life insurance policy. She also filed a motion for declaratory judgment stating that "existing law and Court rules (should be) applied to her cause." She stated that if her petition for change of venue was proper, all other orders were null and void and argued that she had not yet noticed her section 2-1401 petition for hearing. Respondent also filed a motion regarding certain Keystone stock shares which had been subject to the judgment for dissolution, and she alleged that an order had been entered requiring the parties to petition the court for release of this stock. Respondent's affidavit stated as follows:

"1. That on or about May 12, 1992, she made reinvestment

inquiries for IRA funds at Stein Roe, 300 West Adams Street, Chicago, Illinois. At the end of the session, she casually asked if her Husband, KURT ROSENBAUM, still had his account at Stein Roe;

2. The cooperative consultant turned on his computer, which revealed that KURT ROSENBAUM, under an old account number, No. 98123044, had a joint account with a MS. SHERRI BRONNER, both listed at the address of 5532 South Shore Drive, Chicago, Illinois in the amount of $50,000.00;

3. The computer also revealed that on January 7, 1991, KURT ROSENBAUM transferred the total

amount of $50,000. into the name of SHERRI BRONNER, in the form of a municipal bond, from which she receives the approximate sum of $250 monthly;

4. That evening, unable to converse with her husband KURT because he will not give her his unlisted telephone number, this Affiant telephoned Sherri Bronner, and asked her about the fund transfer, and also asked if it was some kind of payoff or a form of blackmail, but accused her of nothing. Ms. Bronner refused to answer and apparently hung up as they were disconnected;

5. This Affiant telephoned again."

At the close of this affidavit respondent related:

"8. At the fundraiser, Ms. Bronner appeared with another man, who spoke of airplanes, and how he could 'influence' them. The next week one of the biggest airplane crashes in history occurred in U.S. This Affiant reported the incident, and was asked by Court officials to try to find out more. She attempted to see Ms. Bronner on many occasions on one pretext or another, to verify her identity, but Ms. Bronner always evaded her deliberately. never answering her doorbell, etc. Affiant was never able to verify her identity."

On May 27, 1992, respondent then filed a motion to vacate that portion of the April 28, 1992 order denying

her petition for change of venue and dismissing her section 2-1401 petition. She set forth numerous reasons which had been previously stated in other pleadings.

On June 1, 1992, the petitioner filed answers to several of respondent's motions. According to petitioner the June-1990 order requiring a court order before either party disposed of his or her shares of Keystone stock was moot because the judgment of dissolution had been affirmed on appeal. Petitioner also requested an order enjoining respondent from filing any other pleadings in the cause and an order admonishing her from interfering with respondent's personal life. In a reply respondent denied that the case was over and requested discovery.

On June 5, 1992, respondent filed

a motion to strike petitioner's motion to strike her motion for declaratory judgment. On the same day petitioner filed a motion for a turnover order against Amalgamated Trust and Savings Bank to satisfy two judgments previously entered against respondent. He also requested that the words "subject to further order of the court" be deleted from the Amalgamated account opened by respondent. In her answer to this motion respondent stated that if she accepted any benefit from her divorce she would be "precluded from pursuing the litigation further." She again denied the finality of the judgment for dissolution of marriage and denied that her appeals had been exhausted. She also claimed that respondent had intruded on her privacy by sending a

copy of his motion for a turnover order to Amalgamated Trust and Savings Bank.

On June 19, 1992, respondent filed a motion for adjudication of unresolved issues and listed eight separate issues which she felt the appellate court had left unresolved in its modified order. According to respondent the issues meriting relitigation included the following: she requested information about petitioner's health as a result of "nuclear exposure," payments to petitioner's attorney, and certain marital assets. Respondent also disputed denial of a supersedeas bond and a later requested appellate court stay. She questioned the trial court's jurisdiction in its contempt order against her and its order awarding attorney fees to Edward Berman. She

also challenged the res judicata effect of an earlier appeal (Rosenbaum v. Rosenbaum (1976), 38 Ill. App. 3d 1, 349 N.E. 2d 73) regarding petitioner's grounds for divorce. Finally, respondent attached the appellate court's affirmance of Mr. Berman's "overcharges" for work she alleged he did not perform. Pages of her petition for rehearing were attached and referenced.

At a hearing on July 7, 1992, the trial court denied the following motions: respondent's motion for a continuance on petitioner's motion for a turnover, respondent's motion to strike petitioner's motion for sanctions, respondent's petition for a rule to show cause, respondent's motion for declaratory judgment, respondent's motion to strike peti-

tioner's motion to strike, petitioner's motion to strike respondent's motion for declaratory judgment, respondent's motion regarding the Keystone stock, respondent's objection to the insurance policy and her motion for adjudication of unresolved issues. The court ordered petitioner to provide respondent with the latest complete copy of his Keystone stock statement, and it granted petitioner's motion for sanctions and set it for hearing. The trial court stated "the only thing that has been outrageous in these proceedings has been the unnecessary litigation that has been caused by Jean Rosenbaum's filing numerous and at times duplicitous pleadings relating to the same issues, trying to relitigate again the issues that have been ruled upon and orders of the

Appellate Court in keeping alive or attempts to keep alive the dissolution proceedings that should have terminated years ago by her relitigating the same issues over and over again." The trial court further stated, "Mrs. Rosenbaum has been given great leeway by me because she's proceeding pro se, and she seems to be a very nice lady, I really didn't want to impose sanctions on her. *** (Her section 2-1401 petition) has caused needless increase in the costs of litigation and in my mind, I don't think it serves any other purpose, but to harass Dr. Rosenbaum."

The third order entered on July 7, 1992, dealt with petitioner's request for a turnover of funds. The order provided that Amalgamated Trust and

Savings Bank turn over to Edward Berman the sum of $2,667.56 plus $625.91 and $7.31 per day from June 4, 1992 until payment, and the sums of $1,320.40, $237.62 and $3.62 per day until payment. The two judgments had previously been awarded against respondent on January 26 and June 4, 1990.

On July 20, 1992, respondent filed a "post-hearing" motion to vacate certain portions of the orders entered on July 7, 1992. Specifically, respondent objected to the provision of 9% interest and additional payment giving as a reason petitioner's "default" in the United States Supreme Court. She also requested leave to file a more complete answer to petitioner's motion for sanctions because she had sustained a broken nose as a result of an assault.

She objected to that portion of the order denying her motion for declaratory judgment and asked for the June 30, 1992 Keystone stock statement, although she admitted receiving the March 1992 statement. She also demanded vacatur of her motion regarding unresolved issues and proceeded to set forth the same reasons. In an attached affidavit she accused Mr. Berman of rushing her in drafting the order.

On August 24, 1992, respondent filed an objection to petitioner's acceptance of $5,398.02 from Amalgamated Trust and Savings Bank. She contended that she had filed her post-hearing motion before release of these funds, and the release was therefore illegal.

A hearing was held on September 1, 1992, on the sanction award. Mr. Berman testified regarding the time he spent in replying to respondent's section 2-1401 petition. Respondent presented no testimony in defense, but argued at length on many old themes. In addition, she claimed that her section 2-1401 petition to vacate should not be subject to sanctions and that counsel's fees were exorbitant. She also questioned the trial court's authority to impose sanctions. The court stated that the purpose of Supreme Court Rule 137 was "in fact to punish somebody for causing conduct that's harassing or which causes unnecessary delay or needless increase in the cost of litigation." The trial court added that respondent had brought up many irrelevant matters

in attempting to defend against the motion. The trial court then found that respondent's conduct had been harassing and not in good faith and stated that she was wasting the court's time and taxpayers' money by incurring costs in litigation. The trial court awarded petitioner's attorney all the time to which he had testified and added one hour of court time for the day. The total sanction award was $2,217.60. The trial court told counsel that he was free to execute on the judgment.

On September 8, 1992, respondent moved to vacate the two sanction orders, arguing that the trial court had abused its discretion in failing to set forth with specificity reasons for the sanctions. Then she launched into her prior arguments directed at the

dissolution proceeding and subsequent "attempts" to "clarify" the appellate rulings which inevitably followed in her former husband's favor. She stated that "the recently disclosed information that Kurt (petitioner) had been in an airplane that flew over the Atlantic Ocean through an atomic cloud was in the Section 2-1401 petition in 1988; this event happened prior to his leaving the marital premises." The motion itself was 14 pages long, not including attachments. She concluded with another personal attack on Mr. Berman, stating "perhaps he is unfit to practice law."

On October 13, 1992, the trial court entertained five of respondent's motions. It denied respondent's motion to vacate the July 7, 1992 order, re-

spondent's objections to Mr. Berman's receipt of $5,398.02, respondent's motion to vacate the two sanction orders, and respondent's second rule to show cause. Respondent appeals from many but not all of these post-judgment orders.

We will first consider the motions filed by the parties in this court. Petitioner filed a motion to strike portions of respondent's brief and requested sanctions. Respondent answered by filing a motion to strike petitioner's motion and filed a separate motion to strike portions of petitioner's brief. We will consider respondent's motions together as they are virtually identical.

Respondent initially contends that petitioner failed to state his argument

properly in a supporting memorandum under Illinois Supreme Court Rule 361(a) (134 Ill. 2d R. 361(a) (amended)) because he failed to have a paragraph entitled "Suggestions in Support of Motion to Strike and for Sanctions" when he specifically incorporated such a section into his motion to strike. This objection is trivial. It is clear from petitioner's motion that he incorporated the argument portion of his appellate brief into the motion. The balance of respondent's motion is directed to those portions of petitioner's brief which she demands to have stricken stating "it is unbelievable that a court is authorized to strike a document that is not before it," apparently referring to the incorporated portion of petitioner's

motion.

According to respondent, petitioner misrepresented facts in the opening portion of his brief entitled "Prefatory Remarks." Respondent also seeks to strike the first issue listed by petitioner in his brief. This issue asked whether respondent's brief should be stricken because it is frivolous and subject to sanctions. Respondent also seeks to strike sentences in petitioner's statement of facts which stated that petitioner raised, educated and supported his children. Respondent countered that she raised the children "as well as bearing them," for many years with little or no help from petitioner." Respondent also requested that this court strike the list of prior appeals contained in

petitioner' brief because it "conveys an incorrect impression." She then moves to strike certain portions of petitioner's argument setting forth her own opinion on the matters, then asks that certain portions be stricken because petitioner cited no authority. Finally, she seeks to strike the words "Illinois Supreme Court" from the title of section III of petitioner's brief because it should be "U.S. Supreme Court." Respondent also requests time to file a reply brief after disposition of the motion. This last request is moot, because respondent filed a reply brief when these motions were taken with the case. Respondent will not be granted leave to file a reply brief regarding her motions.

None of the requests in respondent's

motion need be considered. The only argument actually directed at petitioner's motion has no merit and all other arguments are fully addressed in her brief. Therefore, respondent's motion to strike specified portions of petitioner's brief and respondent's motion to strike petitioner's motion to strike part of her brief and for sanctions are both denied, and respondent is denied leave to file any further pleadings with regard to these motions.

We now address the contentions set forth in petitioner's motion to strike respondent's brief. Petitioner requests that this court strike all of respondent's brief except that portion appealing the sanction order against her.

The argument in petitioner's brief is incorporated into his motion and this requested relief is also contained in the first section of his brief.

The first portion of respondent's brief under attack is the introduction and statement of facts.[1] Both these sections are replete with irrelevant information, attacks on Mr. Berman and arguments which are totally improper. Since this is not respondent's first appeal and since she has been admonished previously about these matters, these portions of her brief must be stricken. See Lill Coal Co. v. Bellario (1975), 30 Ill. App. 3d 384,

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[1]Left intact are respondent's statement of issues and the jurisdictional basis for her appeal.

332 N.E. 2d 485.

The next part of respondent's brief to which petitioner objects is the trial court's ruling on respondent's petition for a change of venue. This petition was filed shortly after respondent filed her third section 2-1401 petition. Respondent's rationale for seeking the venue change is clearly her dissatisfaction with the trial court's rulings. According to respondent, these adverse decisions "confirmed that prejudice existed." Respondent also contends that no substantive ruling has been made, referring to a decision on her section 2-1401 petition. The law is very clear, however, that a section 2-1401 petition does not constitute a new action for the purpose of venue. (In re Marriage of

Kozloff (1984), 101 Ill. 2d 526, 463 N.E. 2d 719.) This portion of respondent's brief is stricken. Since respondent has been advised of the impropriety of bringing a petition for change of venue in just such a situation, this portion is subject to sanctions.

We also strike that portion of respondent's brief assailing the trial court's jurisdiction to rule on her section 2-1401 petition. The record reveals that on April 28, 1992, the trial court entertained for hearing petitioner's motion to strike her section 2-1401 petition. Respondent was duly noticed, and she does not deny actual receipt of notice. Instead she erroneously believes that no ruling can be made on her petition unless it

was expressly called for hearing. This argument is not correct, and her argument is stricken. See 134 Ill. 2d R. 184; see also Rule 2.1, circuit court of Cook County, eff. Sept. 1, 1988.

In sections (c), (f) and part of (e) of respondent's brief she again raises the argument that respondent's failure to answer her petition for certiorari to the Supreme Court renders the previously affirmed judgment of dissolution invalid. She alleges that she "is entitled to have the appealed decision vacated." Respondent raises this issue directly in sections (c) and (f); in (e) she contends that the trial court's allowance of a turnover from Amalgamated Bank and Trust Company was incorrect because the question of

the validity of the money judgments which gave rise to the turnover order were "still before the United States Supreme Court." This argument was dealt with in the 1991 modified order of this court and is therefore res judicata. Respondent's persistence with this argument subjects her to sanctions. Sections (c) and (f) are stricken.

Respondent raises a variety of contentions in the balance of paragraph (e) regarding the turnover order. Respondent believes that the trial court committed error by failing to entertain her request for a continuance. The record reveals, however, that the trial court specifically denied this request and respondent actually quotes the trial court in her brief. Thus, this

contention is untrue and subjects respondent to sanctions.

Respondent also believes that the trial court should have granted her request for a continuance "until all litigation on the Section 2-1401 petition had been completed." This continuance was requested in the closing paragraph of her response to petitioner's demand for a turnover order. She never states why she believes the denial was an abuse of discretion. Thus, this portion of paragraph (e) is stricken as insufficient.

Next, respondent maintains that Mr. Berman inserted the interest payment into the turnover order without her approval, but she does not explain how this could be error. The order was duly signed and entered by the trial court.

Respondent also claims as error the failure of the trial court to specifically adjudicate the matter of interest. But petitioner computed the 9% interest on both judgments and set forth the daily charges thereafter in his motion. The order subsequently entered by the trial court duplicates petitioner's request and is not error.

Finally, within section (e) respondent argues that her petition for a rule to show cause should have been heard before petitioner's turnover motion. This claim is frivolous. Since respondent has failed to set forth any argument that warrants consideration, paragraph (e) is stricken. Wilson v. Continental Body Corp. (1981), 93 Ill. App. 3d 966, 969, 418 N.E. 2d 56.

In section (g), respondent lists

nine matters and contends that the trial court ruled incorrectly when it denied her motion for adjudication of unresolved issues. Within this section it is clear that respondent seeks redress of old grievances not pertinent to this appeal. Some of the issues deal with property matters such as dissipation of marital assets, sale of shopping center and various pensions. Respondent requested information about petitioner's "alleged cerebral hemorrhage." She questioned the jurisdiction of the trial court in a contempt order, the res judicata effect of Rosenbaum v. Rosenbaum (1976), 38 Ill. App. 3d 1, 349 N.E. 2d 73, and denial of a stay because of a bondsman's refusal to provide her with a supersedeas bond; she also attacked Mr. Berman's "over-

charges for work and time he did not perform." Finally, respondent questioned a judgment of $1,320.40 entered against her on November 1, 1989. None of these matters are the subject of the appeal here, and respondent has failed to explain why the trial court's order denying her motion for "adjudication of unresolved issues" should be reversed. This paragraph is stricken in its entirety. The appellate court is not a dumping ground where a litigant can simply list grievances and expect court action and response. Bank of Ravenswood v. Maiorella (1982), 104 Ill. App. 3d 1072, 433 N.E. 2d 1044.

The only portion of respondent's brief requiring consideration on the merits is her argument on the sanction award to petitioner. Respondent first

contends that Mr. Berman is not entitled to sanctions under Rule 137 because the appellate court reversed and remanded a portion of the prior order. Respondent completely ignores the basis of petitioner's request for sanctions. Petitioner noted respondent's successive section 2-1401 petitions and an improper petition for change of venue. This has nothing to do with any remanded portion of the prior order.

Respondent next argues, as she did before the trial court, that the sanction order does not specify the court's reasons for the award. She disputes the trial court's findings that her actions constituted harassment and abuse of process and sets forth a law dictionary definition of harassment. She denies she is guilty of harassment because she

always paid her filing fees, and she concludes that her pleadings have a "legitimate purpose."

The test on appeal of a sanction order is whether or not the trial court abused its discretion in entering sanctions. (Singer v. Brookman (1991), 217 Ill. App. 3d 870, 578 N.E. 2d 1.) At the hearing on petitioner's motion for sanctions, respondent failed to present any evidence other than her own belief that Mr. Berman's fees were too high. This is not evidence. In her brief respondent has failed to show that the trial court committed an abuse of its discretion in granting the fees and costs to which Mr. Berman testified. Thus, we have no basis on which to alter the trial court's ruling nor would we do so. We agree with the trial court's assessment that re-

spondent's actions could only be considered harassment and interposed for delay.

By this order we also grant petitioner's motion for sanctions under Supreme Court Rule 375. (134 Ill. 2d R. 375 (amended).) This is respondent's thirteenth appeal over a 20-year span regarding matters involving the dissolution of her marriage. After countless pleadings and hearings in the trial court and in this court in which respondent has been directly informed that she has no more grounds on which to contest the dissolution of her marriage, respondent has refused to recognize the reality of finality. Litigation should not be a life-style, but respondent has made it so. This appeal is frivolous and not taken in

good faith despite respondent's protestations to the contrary. Her appeal is not grounded in fact nor warranted by existing law or good faith argument. We deem this appeal to have been prosecuted for the improper purposes of delay, harassment and causing needless expense to petitioner and to the courts. Appropriate sanctions include the reasonable costs of the appeal and related expenditures.

Because of the abuse to which respondent has subjected the courts this case will also be remanded to the trial court for the sole purpose of fashioning a remedy to prohibit or limit respondent's access to the courts. The court system was never intended to be available for manipulation by individuals who have an uncontrollable pro-

pensity to pursue vexatious litigation. (In re Martin-Trigona (2d Cir. 1993), 9 F. 3d 226.) The court in In re Martin-Trigona listed solutions which have been crafted by Federal courts to limit the opportunities to these individuals. The trial court in this case may wish to explore such solutions.

Respondent's appeal is dismissed except for paragraph (f) regarding the sanction order. The sanction order is affirmed. Petitioner's request for an award of sanctions on appeal is granted. Petitioner may file with this court an affidavit of fees and costs within 14 days of the date of this order and respondent is granted leave to file a response within 14 days thereafter. Respondent is denied leave to file any further pleadings regarding the mo-

tions taken with this case.

Affirmed in part and dismissed in part; cause remanded.

HARTMAN, J., with DiVITO, P.J., and SCARIANO, J., concurring.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF KURT ROSENBAUM,	)	
Petitioner, Counter-Defendant, Appellee	)	
v.	)	No. 1-92-3948
JEAN ROSENBAUM,	)	
Respondent, Counter-Plaintiff, Appellant, acting Pro Se.	)	COPY

ORDER

IT IS HEREBY ORDERED THAT Respondent, Counter-Plaintiff, Appellant's Petition for rehearing is hereby DENIED.

(Signed)
PRESIDING JUSTICE GINO DiVITO

(Signed)
JUSTICE ALLEN HARTMAN

(Signed)
JUSTICE ANTHONY SCARIANO

DATED: April 28, 1994

APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF KURT ROSENBAUM, Petitioner/Counter- Defendant, Appellee, and JEAN ROSENBAUM, Respondent/Counter- Plaintiff, Appellant, acting Pro Se.	)	NO. 1-92-3948

COPY

ORDER

The petition for sanctions sought by the attorney for Kurt Rosenbaum is granted.

The attorney fees sought are reduced to 40.75 hours at a rate of $100.00 per hour, amounting to $4,075.00. In addition, costs in the amount of $47.95 are awarded to petitioner's attorney.

The total amount of sanctions awarded therefore are $4,122.95.

Date: April 28, 1994.

GINO L. DiVITO, P.J.

ALLEN HARTMAN, J.

ANTHONY SCARIANO, J.

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN RE THE MARRIAGE OF KURT ROSENBAUM,	)	
Petitioner, Counter-Defendant, Appellee,	)	
and	)	No. 92-3948
JEAN ROSENBAUM,	)	
Respondent, Counter-Plaintiff, Appellant, acting Pro Se.	)	COPY

ORDER

IT IS HEREBY ORDERED:

The MOTION FOR RECONSIDERATION OF MARCH 29, 1994 ORDER PERTAINING TO AMOUNT OF TRIAL COURT SANCTION AWARD TO KURT ROSENBAUM presented by Appellant is

Allowed: _____ Denied: X

ALLEN HARTMAN, Justice

ANTHONY SCARIANO, Justice

GINO L. DiVITO, Justice

DATED: May 23, 1994.

Appendix (44)

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN RE THE MARRIAGE OF KURT ROSENBAUM, Petitioner, Counter-Defendant, Appellee, and JEAN ROSENBAUM, Respondent, Counter-Plaintiff, Appellant, acting Pro Se.	)	No. 92-3948

COPY

ORDER

This cause coming on to be heard this day on the MOTION, I. To Consolidate Appeal No. 92-3948 with Appeal No. 93-3777; II. To Put Appeal No. 92-3948 on identical time-table as No. 93-3777, for purposes of further appeal, presented by JEAN ROSENBAUM;

IT IS HEREBY ORDERED:

Appeal No. 92-3948 is consolidated with Appeal No. 93-3777.

Allowed: ____ Denied: ____

Appeal No. 92-3948 is placed on the

identical time-table as Appeal No. 93-3777, and its further appeal shall count from the finalization date of Appeal No. 93-3777.

Allowed: _____ Denied: X

JUSTICE ALLEN HARTMAN

JUSTICE ANTHONY SCARIANO

JUSTICE GINO DiVITO

Dated: May 23, 1994.

Appendix (46)

ILLINOIS SUPREME COURT
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, IL. 62706
(217) 782-2035

77388

COPY

Ms. Jean Rosenbaum
1354 W. Greenleaf St.
Chicago, IL. 60626

October 6, 1994

No. 77388-Kurt Rosenbaum, respondent,
v. Jean Rosenbaum, petitioner.
Leave to appeal, Appellate
Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1994.

No. 77388

IN THE

SUPREME COURT OF ILLINOIS

Kurt Rosenbaum,	)	
	)	
Respondent,	)	
	)	
v.	)	AC1-92-3948
	)	
Jean Rosenbaum,	)	
	)	
Petitioner.	)	C O P Y

ORDER

This matter has come for consideration upon the motion of Petitioner to stay the mandate of this Court pending appeal or application for certiorari in the United States Supreme Court.

IT IS HEREBY ORDERED that the motion is denied.

MICHAEL A. BILANDIC
Justice, Supreme Court of Illinois

FILED: October 25, 1994.

NO. 77388

IN THE SUPREME COURT OF ILLINOIS

IN RE THE MARRIAGE OF)
)
KURT ROSENBAUM,)
)
Respondent ,)
)
and) AC1-92-3048
)
JEAN ROSENBAUM,)
)
Petitioner,)
)
acting pro Se.) C O P Y

ORDER

This matter has come for consideration upon the motion of Petitioner, JEAN ROSENBAUM, acting Pro Se, to reconsider and vacate Order denying stay of Mandate of this Court pending appeal or application for certiorari in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of an application for certiorari or the expiration of the period within which said appli-

cation may be filed. If certiorari is applied for, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this court, be further stayed pending resolution by the United States Supreme Court of such application. If no such affidavit is filed, the mandate shall, without further order, issue upon expiration of the time within which certiorari may be sought.

The Motion to Reconsider and Vacate Order Denying Stay of Mandate is

Allowed: _____ Denied: X

MARY McMORROW
Justice, Supreme Court of Illinois

Dated: November 8, 1994
FILED.
Chicago Supreme Court Clerk

PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF UNITED STATES, from the APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

IN RE THE MARRIAGE OF	)	
KURT ROSENBAUM,	)	
Petitioner, Counter-Defendant, Appellee, Respondent above,	)	
and	)	NO. 92-3948
JEAN ROSENBAUM,	)	Dated:
Respondent, Counter-Plaintiff, Appellant, acting pro Se, Petitioner above.	)	November 30, 1994
	)	C O P Y

ORDER

This matter has come for consideration upon the MOTION TO STAY APPELLATE MANDATE TO TRIAL COURT presented by JEAN ROSENBAUM, Respondent, Counter-Plaintiff, Appellant, acting pro Se, Petitioner above, pending application for certiorari in the United States Supreme Court;

IT IS ORDERED said Motion is denied. Justice Gino DiVito, Justice Allen Hartman, Justice Anthony Scariano.

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, DC 20543

December 13, 1994

Ms. Jean Rosenbaum
1354 West Greenleaf Street
Chicago, IL 60626 C O P Y

Re: Jean Rosenbaum
v. Kurt Rosenbaum
Application No. A-428

Dear Ms. Rosenbaum:

The application for a stay of mandate pending the filing and disposition of a petition for certiorari in the above-entitled case has been presented to Justice Stevens, who on December 13, 1994 endorsed thereon the following:

"Deny
John Paul Stevens
12/13/94"

Sincerely

WILLIAM K. SUTER, Clerk

By CYNTHIA RAPP
Assistant Clerk

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS, COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION.

IN RE THE MARRIAGE OF	)	99500
KURT ROSENBAUM,	)	
Petitioner, Counter-Defendant,	)	NO. 81 D 22050
and	)	Calender 41
JEAN ROSENBAUM,	)	Page (3) of (3) pages.
Respondent, Counter-Plaintiff, acting Pro Se.	)	C O P Y

ORDER

a) Respondent shall have five (5) days from the date of this Order to verify the present worth of the stock previously posted with the Clerk of the Circuit Court of Cook County, Illinois, to serve as supersedeas in the prior appeal(s). If the current value is $3,300.00 or more, it shall stand as the supersedeas and a stay will ensue.

b) If the value of the stock is less than $3,300, Respondent shall

post $3,300.00 cash with said Clerk to secure the stay that ensues.

c) All orders appealed shall be on the same time-table with time to appeal being extended for thirty-five (35) days from the date of this order.

ENTERED: October 13, 1992

IRWIN J. SOLGANICK
Judge

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION.

IN RE THE MARRIAGE OF	)
KURT ROSENBAUM,	)
Petitioner, Counter-Defendant (Appellee),	)
and	) NO. 81 D 22050
JEAN ROSENBAUM,	) Calender 41
Respondent, Counter-Plaintiff (Appellant), acting Pro Se.	) C O P Y

ORDER

This cause coming on to be heard this day on the EMERGENCY MOTION FOR FINAL ORDER EFFECTING STAY, presented by JEAN ROSENBAUM, Respondent, Counter-Plaintiff (Appellant), acting Pro Se, and the Court having heard argument of JEAN ROSENBAUM and been advised in the premises,

IT IS HEREBY ORDERED:

The Court finds that both the super-

sedeas and Notice of Appeal requirement previously established by the Court have been complied with by JEAN ROSENBAUM.

The stay is allowed per the Emergency Motion for Final Order Effecting Stay, and enforcement of all judgments encompassed by the Notice of Appeal is stayed.

ENTERED: November 10, 1992

CAROLE BELLOWS
Judge

ILL. REV. STAT. (1991-1992), SEC. 2-1401 (POST-JUDGMENT), CH. 110.

PART 14. POST-JUDGMENT

2-1401. Relief from judgments

§ 2-1401. Relief from judgments. (a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. There shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule.

(c) The petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.

(d) The filing of a petition under this Section does not affect the order or judgment, or suspend its operation.

(e) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment.

(f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

ILLINOIS SUPREME COURT RULE 137 (1991 and 1992), ILL. REV. STAT., Ch. 110-A, in 1991, and COURT RULES in 1992.

Rule 137. Signing of Pleadings, Motions and Other Papers—Sanctions

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee. All proceedings un-

der this rule shall be within and part of the civil action in which the pleading, motion or other paper referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate cause of action, or another cause of action within the civil action in question, by, on behalf of or against any party to the civil action in question, and by, on behalf of or against any attorney involved in the civil action in question.

This rule shall apply to the State of Illinois or any agency of the State in the same manner as any other party. Furthermore, where the litigation involves review of a determination of an administrative agency, the court may include in its award for expenses an amount to compensate a party for costs actually incurred by that party in contesting on the administrative level an allegation or denial made by the State without reasonable cause and found to be untrue.

Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

Adopted June 19, 1989, eff. Aug. 1, 1989.

ILLINOIS SUPREME COURT RULE 375 (1991 and 1992), ILL. REV. STAT., Ch. 110-A, in 1991, and COURT RULES in 1992.

Rule 375. Failure to Comply With Rules; Frivolous Appeals—Sanctions

(a) Failure to Comply With Appeals Rules. If after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules, appropriate sanctions may be imposed upon such a party or attorney for the failure to comply with these rules. Appropriate sanctions for violations of this section may include an order that a party be barred from presenting a claim or defense relating to any issue to which refusal or failure to comply with the rules relates, or that judgment be entered on that issue as to the other party, or that a dismissal of a party's appeal as to that issue be entered, or that any portion of a party's brief relating to that issue be stricken. Additionally, sanctions involving an order to pay a fine, where appropriate, may also be ordered against any party or attorney for a party or parties.

(b) Appeal Not Taken in Good Faith; Frivolous Appeals. If, after consideration of an appeal, it is determined that the appeal itself is frivolous, or that an appeal was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting the appeal is for such purpose, an appropriate

sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal is to delay, harass, or cause needless expense.

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal, and any other expenses necessarily incurred by the filing of the appeal, including reasonable attorney fees.

A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction. Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order.

Adopted June 19, 1989, eff. Aug. 1, 1989.

OSTENDORF v. INTERNATIONAL HARVESTER CO. (1982), 89 Ill. 2d 273, 279, 433 N.E. 2d 253. (NOTE: Ill. Rev. Stat. 1979, Ch. 110, par. 72, has since been renumbered to Ill. Rev. Stat., Ch. 110, Section 2-1401. (See Appendix (57)-(58).

and moved to dismiss the petition. As grounds for its motion, International Harvester asserted that the facts alleged in the petition, even if proved, would not constitute fraudulent concealment. It further asserted that the petition was untimely, since it had been filed more than two years after entry of the judgment sought to be vacated. Under section 72(3), the petition must be filed not later than two years after the entry of judgment, unless the running of the limitations period is tolled by the legal disability of the petitioner, by duress, or by fraudulent concealment of the ground for relief. (Ill. Rev. Stat. 1979, ch. 110, par. 72(3).) International Harvester contended that the limitations period had run on the Ostendorfs' petition, and that since the allegations of the petition did not amount to fraudulent concealment, the statute had not been tolled.

The circuit court, after hearing the arguments of coun-

sel, took the matter under advisement. On December 11, 1979, it granted International Harvester's motion to dismiss, finding that the petition's allegations of fraudulent concealment were "not sufficiently substantiated," and that the petition was therefore not timely. The appellate court reversed and remanded the cause for an evidentiary hearing on the issue of fraudulent concealment, as well as the other issues raised by the petition. It expressed no opinion on the merits. (88 Ill. App. 3d 316, 319.) We granted leave to appeal. 73 Ill. 2d R. 315.

We first consider whether the circuit court properly dismissed the Ostendorfs' petition. Although a section 72 petition is filed in the same action in which the judgment it seeks to vacate was entered, it is not a continuation thereof. (Ill. Rev. Stat. 1979, ch. 110, par. 72(2).) The petition is in fact a new action and is subject to the usual rules of civil practice. (*Brockmeyer v. Duncan* (1960), 18 Ill. 2d 502, 505; Davis, *The Scope of Section 72 of the Civil Practice Act*, 55 Ill. B.J. 820 (1967).) Where it fails to state a cause of action or shows on its face that the petitioner is not entitled to

IN RE MARRIAGE OF KOZLOFF

(1984), 101 Ill. 2d 526,

463 N.E. 2d 719.

2d 129.) Of course, there is always a right to a change of venue, even after a substantial ruling, if actual prejudice can be demonstrated (Ill. Ann. Stat., ch. 110, par. 2—1001, Historical and Practice Notes, at 142-43 (Smith-Hurd 1983); *Rosewood; Wier v. Isenberg* (1981), 95 Ill. App. 3d 839, 846), provided the motion is made at the earliest practical moment after the prejudice is discovered (*People v. King* (1973), 54 Ill. 2d 291, 297).

It follows that a judge's substantive ruling during the dissolution proceeding will preclude a change of venue as of right on a post-decree petition before that same judge. As sometimes occurs, however, the judge assigned to hear a post-decree petition or motion may not be the same judge who presided at the dissolution proceeding, or different judges may hear different post-decree matters at different times. Section 2—1001(c) of the Code of

Appendix (65)

Civil Procedure provides that a motion for change of venue will be allowed unless "*the judge to whom it is presented* has ruled on any substantial issue in the case." (Emphasis added.) (Ill. Rev. Stat. 1981, ch. 110, par. 2–1001(c).) Thus, the assignment of a different judge at any point in the proceedings entitles the parties to a change of venue as of right if that judge has not made a substantial ruling in the case. In this case, while Judge Burks did not preside at the dissolution proceeding, he had made numerous rulings on other petitions and motions before Donald moved for a change of venue. Since these post-decree matters are to be regarded as part of the same proceeding, Donald did not have an absolute right to a change of venue and his motion was properly denied.

PARTIAL LIST OF CORRECTIONS TO CLERICAL AND OTHER ERRORS IN THE APPELLATE, MARCH 29, 1994 ORDER.

(APPENDIX Numbering Used.)

1. ORDER states, Appendix (7):

".... and she alleged that an order had been entered requiring the parties to petition the court for release of this stock."

A review of the documents listed contained in the trial court Record on Appeal in JEAN's Appellate BRIEF reveals no such Order, nor does she recollect that such an Order exists.

2. ORDER states, Appendix (12)(13):

"She also claimed that respondent had intruded on her privacy by sending a copy of his motion ....."

Should read "petitioner had intruded on her privacy...."

3. ORDER states: Appendix (18):

"She also demanded vacatur of her motion regarding unresolved issues."

JEAN ROSENBAUM did NOT demand vacatur of her motion regarding unresolved issues, pursuing an adjudication on it to the end, to best of recollection.

4. ORDER states, Appendix (27):

" ..The first portion of respondent's brief under attack is the introduction and statement of facts. Both these sections are replete with irrelevant information, attacks on Mr. Berman and arguments which are totally improper. Since this is not respondent's first appeal and since she has been admonished previously about these matters, these portions of her brief must be stricken."

The ORDER does not cite one actual instance of the alleged "irrelevant information, attacks on Mr. Berman, etc." Nor does it state when JEAN was admonished and by whom. This is her first appeal of this segment of the case, filed in Appellate Court under a new number.

5. ORDER states, Appendix (28)-(29):

"The next part of respondent's brief to which petitioner objects is the trial court's ruling on the

respondent's petition for a change of venue. .... This portion of respondent's brief is stricken. Since respondent has been advised of the impropriety of bringing a petition for change of venue in just such a situation, this portion is subject to sanctions."

The ORDER does not say who gave her this advice, and she does not recollect it.

6. ORDER states, Appendix 31:

"This argument was dealt with in the 1991 modified order of this court and is therefore res judicata. Respondent's persistence with this argument subjects her to sanctions. Sections (c) and (f) are stricken."

Dealt with correctly or incorrectly in the Modified Order? The decision in Deakins v. Monaghan (1988), 484 U.S. 193, 199, 108 S.Ct. 523, 98 L.Ed. 2d 529, the printing of which may have overlapped, has been ignored.

7. ORDER states, Appendix (33)-(35):

"In section (g), Respondent lists nine

matters and contends that the trial court ruled incorrectly when it denied her motion for adjudication on unresolved issues ..... None of these matters are the subject of the appeal here, and respondent has failed to explain why the trial court's order denying her motion for "adjudication of unresolved issues" should be reversed. This paragraph is stricken in its entirety."

An examination of JEAN's Appellate Brief, pages 42-43, reveals paragraph (g) begins by saying: "The Appellate Court's Modified Order left issues of importance unresolved despite its length (34 pages)." On its page 43, the Brief cited law that says: "matters concerning the merits of the controversy between the parties which were presented to but not decided by the Appellate Court can be relitigated on remand."

STATE OF ILLINOIS)
)
COUNTY OF C O O K)

AFFIDAVIT

I, JEAN ROSENBAUM, being first duly sworn upon oath, depose and state I am the petitioner, acting Pro Se in the aforestated cause, that I have read the foregoing PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, with Appendix, by me subscribed, that I know the contents thereof, and the same is true in substance and in fact.

Jean Rosenbaum

JEAN ROSENBAUM, Petitioner,
acting Pro Se. *

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 4TH day of JAN, 1995.

Howard L. Eisenberg
Notary Public *

" OFFICIAL SEA
HOWARD L. EISENB
NOTARY PUBLIC, STATE OF ILL
MY COMMISSION EXPIRES 12/

" OFFICIAL SEAL "
HOWARD L. EISENBERG
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/5/95

* See copy marked "Notarized Copy" for original signatures.

Jean Rosenbaum, acting Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)